

**PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY APPLYING TO BECOME A PARTICIPANT IN THE BROADBAND COMMUNITY PANEL AND/OR INSTALLING AND USING THE APPLICATION YOU ARE AGREEING TO THESE TERMS AND CONDITIONS.**

**NOTE PARTICULARLY CONDITIONS 3.5 (PERTAINING TO YOUR CONSENT TO YOUR ISPS PROVIDING CERTAIN INFORMATION AND YOUR WAIVER OF CLAIMS), 6 (LIMITATIONS OF LIABILITY) AND 7 (DATA PROTECTION).**

## **1. INTERPRETATION**

- a. The following definitions and rules of interpretation apply to these terms & conditions.
- b. **Application:** the software supplied to the Participant by FCC and voluntarily installed by the Participant onto the Participant's Mobile Device Equipment to measure the mobile broadband performance of the Connection on the Participant's Mobile Device.
- c. **Connection:** the Participant's own broadband internet connection, provided by a Wireless Broadband Service Provider.
- d. **Mobile Device:** the Participant's mobile phone or other mobile device used to provide the Participant's Connection.
- e. **Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- f. **Wireless Broadband Service Provider /Carrier/ISP:** the company providing the mobile broadband internet connection to the Participant during the term of this Program.
- g. **Volunteer Subscriber/Participant/You/Your:** the person who volunteers to participate in the Program, under these terms and conditions.
- h. **Parties: both the Participant and the FCC.**
- i. **Party:** the Participant, the Contractor or the FCC.
- j. **We/Federal Communications Committee (FCC) / Our:** the entity providing the Application and sponsoring and managing the Program, namely:
  - The United States Federal Communications Commission
  - 445 12<sup>th</sup> St. SW, Washington, DC 20554; and its Contractor, SamKnows.
- k. **SamKnows/Contractor:** the entity providing the technical Services and operational support of the Program, namely
  - SamKnows Limited (Co. No. 6510477)
  - 25 Harley Street, London W1G 9BR
- l. **Services / Program:** the Measuring Broadband America Program's nationwide performance study of consumer wireless broadband service in the United States that

provides information for consumers about their broadband service sponsored and administered by the FCC with the support of its Contractor.

- m. **Test Results:** Information concerning the Participant's mobile broadband service performance results.
- n. **Privacy Notice:** the short-form notice to the Participant of the Information We Collect and policies for Third Party Data Sharing, incorporated by reference and part of this agreement.
- o. **Privacy Policy:** reference materials regarding our policies on the protection of volunteer subscribers' privacy and anonymity in test results, incorporated by reference and part of this agreement.
- p. **Program contact email address:** the email address provided to Participants to make inquiries or seek support regarding the Application.

Headings in these terms and conditions shall not affect their interpretation.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

The schedules form part of these terms and conditions.

A reference to writing or written includes faxes and e-mails.

Any obligation in these terms and conditions on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

## 2. FCC' COMMITMENT TO YOU

- a. Subject to the Participant complying fully with these terms and conditions, We shall use reasonable care to:
  - i. provide the Participant with the Measurement Services under these terms and conditions;
  - ii. supply the Participant with Application and instructions detailing how it should be used with the Participant's Mobile Device; and
  - iii. comply with all applicable United States privacy laws and directives, and will access, collect, process and distribute the information according to the following principles:
    - 1. Fairness: We will process test results fairly;
    - 2. Specific purpose: We will access, collect, process, use, store and disclose/distribute data for the purposes and reasons specified in this agreement and not in ways incompatible with those purposes;
    - 3. Restricted: We will restrict our data access, use and disclosure practices to those adequate, relevant, and not exceeding the purposes for which we collect and process the information;
    - 4. Accurate: We will use best efforts to ensure that the data we collect is accurate, including by working with experts in the field and the Participant's carrier;
    - 5. Security: We will take reasonable care to establish and maintain the appropriate administrative, technical, and physical safeguards when collecting and processing the data associated with this Trial to protect

personal data against destruction or loss, alteration, unauthorized disclosure, use or access, in particular where the processing involves the transmission of data over a network. At a minimum such reasonable care shall not be less than what we would use to protect our own confidential or proprietary information.

- b. In addition, We shall:
  - i. provide Participant with access to the Program contact email address for customer services, which the Participant may use for questions and to give feedback and comments;
  - ii. provide Participant with access to test results of the Participant's mobile broadband performance in the application.
  - iii. provide Participant with support and troubleshooting services in case of problems or issues with the Application; and
- c. While we will make all reasonable efforts to ensure that the Services cause no disruption to the performance of the Participant's broadband Connection, including only running tests when there is no concurrent network activity generated by the Participant. The Participant acknowledges that the Services may occasionally impact the performance of the Connection and agrees to hold FCC and their Carrier harmless for any impact the Services may have on the performance of their Connection.

### 3. PARTICIPANT'S OBLIGATIONS

- a. The Participant is not required to pay any fee for the provision of the Services by the FCC or to participate in the Program.
- b. The Participant agrees to use reasonable care to:
  - i. in no way tamper with or damage the application, or attempt to do so where the effect would be to disrupt, enhance, degrade, or tamper with the results of any test;
  - ii. agrees that the Application may be upgraded to incorporate changes to the Software and/or additional tests at the discretion of FCC, whether by remote uploads or otherwise;
  - iii. not publish data, give press or other interviews regarding the Program without the prior written permission of FCC; and
  - iv. contact the FCC or its Contractor directly, and not the Participant's Carrier, in the event of any issues or problems with the Application, by using the program contact email address.

### 4. PARTICIPANT'S CONSENT TO PARTICIPATION AND COLLECTION OF TEST RESULTS -- THE PARTICIPANT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION.

- a. The Participant expressly consents to the Application collecting and disclosure of information about the Participant's broadband performance in accordance with the terms of the privacy policy and privacy notice including the sharing of the Participant's test results with third parties **Internally, Third-Party Partners Who Help Us Run Our Test and Support Our Program, the general public, and Pursuant to legitimate requests by law enforcement or where otherwise required by law or regulation.** The Participant hereby waives any claim that the FCC, its Contractor or the Participant's Carrier's collection or disclosure of Participant's test

results to any party constitutes a violation of any right or any other right or privilege that the Participant may have under any federal, state or local statute, law, ordinance, court order, administrative rule, order or regulation, or other applicable law, including, without limitation, under 47 U.S.C. §§ 222 and 631 (each a “Privacy Law”).

- 5. PARTICIPANTS WITHDRAWAL FROM THE PROGRAM.** If notwithstanding Participant’s consent under Section 3.5, the Participant desires to cease participation under this agreement, the Participant shall promptly cease use of the Application and delete and destroy any copies of the Software installed on the Participant’s Mobile Device. The FCC will not collect further test results from the Participant but will not remove from its records any data collected with respect to such Participant prior to the date of Participants opting out of participation. The Participant further consents to transmission of information from this Program Internationally, including the information provided by the Participant’s ISP, specifically the transfer of this information to FCC in the United Kingdom, FCC’ processing of it there and return to the United States.

**6. INTELLECTUAL PROPERTY RIGHTS**

- a. Intellectual Property Rights relating to the Application are explicitly licensed under an Open Source agreement and are available under the terms of the agreement. Intellectual Property Rights related to the Services and Program related to the openly disclosed technical methodologies and operational approaches are freely available. Intellectual Property Rights exclusive of these terms are the property of the owners’ respective terms and licensing conditions.
- b. The Participant shall not translate, copy, adapt, vary or alter the Application in a manner that would disrupt, enhance, degrade, or tamper with the results of any test; or otherwise contradict the purposes of the Program or the provision of the Services.
- c. Participation in the Broadband Community Panel gives the participant no Intellectual Property Rights in the Test Results. Ownership of all such rights is governed by Federal Acquisition Regulation Section 52.227-17, which has been incorporated by reference in the relevant contract between FCC and the FCC. The Participant hereby acknowledges and agrees that FCC may make such use of the Test Results as is required for the Program consistent with the Privacy Policy and Privacy Notice.
- d. Certain core testing technology and aspects of the architectures, products and services are developed and maintained directly by the Contractor. The Contractor also implements various technical features of the measurement services using particular technical components from a variety of vendors and partners including, Level 3 and others.

**7. LIMITATIONS OF LIABILITY - THE PARTICIPANT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

- a. The entire financial liability of the FCC and the Contractor (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Participant, including and without limitation, with respect to the following shall be limited to:
  - i. any use made by the Participant of the Services, the Application or any part of them; and
  - ii. any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms and conditions.

- b. All implied warranties, conditions and other terms implied by statute or other law are, to the fullest extent permitted by law, waived and excluded from these terms and conditions.
- c. Notwithstanding the foregoing, nothing in these terms and conditions limits or excludes the liability of the Contractor:
  - i. for death or personal injury resulting from its negligence or willful misconduct;
  - ii. for any damage or liability incurred by the Participant as a result of fraud or fraudulent misrepresentation by FCC;
  - iii. for any violations of U.S. consumer protection laws;
  - iv. in relation to any other liabilities which may not be excluded or limited by applicable law.
- d. Subject to conditions of this section, our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of these terms and conditions shall be limited to \$100.
- e. In the event of any defect or modification in the Application, the Participant's sole remedy shall be the deletion and reinstallation of the Application.
- f. The Participant acknowledges and agrees that these limitations of liability are reasonable in all the circumstances, particularly given that no fee is being charged by FCC for the Services or participation in the Program.
- g. It is the Participant's responsibility to pay all service and other charges owed to its Carrier in a timely manner and to comply with all other Carrier applicable terms. The Participant shall ensure that their broadband traffic, including the data produced by the Application and Service during the Program, does not exceed the data allowance included in the Participant's broadband package. If usage allowances are accidentally exceeded and the Participant is billed additional charges from the ISP as a result, neither the FCC nor its Contractor are under any obligation to cover these charges although it may choose to do so at its discretion.

## **8. TERM AND TERMINATION**

- a. This Agreement shall continue until terminated in accordance with this clause.
- b. Each party may terminate the Services immediately by written notice to the other party at any time. Notice of termination may be given by email. Notices sent by email shall be deemed to be served on the day of transmission if transmitted before 5.00 pm Eastern Time on a working day, but otherwise on the next following working day.
- c. On termination of the Services for any reason we shall have no further obligation to provide the Services.
- d. The Participant shall terminate in accordance with the terms of PARTICIPANTS WITHDRAWAL FROM THE PROGRAM.

## **9. SEVERANCE**

- a. If any provision of these terms and conditions, or part of any provision, is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be

deemed not to form part of these terms and conditions, and the validity and enforceability of the other provisions these terms and conditions shall not be affected.

#### **10. ENTIRE AGREEMENT**

- a. These terms and conditions constitute the whole agreement between the parties and replace and supersede any previous agreements or undertakings between the parties.
- b. Each party acknowledges that, in entering into these terms and conditions, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty.

#### **11. ASSIGNMENT**

- a. The Participant shall not, without the prior written consent of FCC, assign, transfer, charge, mortgage, subcontract all or any of its rights or obligations under these terms and conditions.
- b. Each party that has rights under these terms and conditions acknowledges that they are acting on their own behalf and not for the benefit of another person.

#### **12. NO PARTNERSHIP OR AGENCY**

- a. Nothing in these terms and conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor make any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

#### **13. RIGHTS OF THIRD PARTIES**

- a. Except for the rights and protections conferred on a Carrier under these Terms and Conditions which they may defend, a person who is not a party to these terms and conditions shall not have any rights under or in connection with these Terms and Conditions.

#### **14. PRIVACY, DATA PROTECTION AND PAPERWORK REDUCTION ACTS – THE PARTICIPANT’S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION.**

- a. The Participant consents to the collection; sharing; and disclosure policies and terms described in the Privacy Policy/Privacy Notice and agrees to the incorporation of the terms by reference.
- b. The Participant acknowledges and agrees that the information we collect about the Participant’s broadband performance is anonymous and recognizes that no unique or persistent identifier is associated with any test results we collect. For the avoidance of doubt, the Participant acknowledges and agrees that subject to the privacy policies discussed below, the specific technical characteristics of tests and other technical features associated with the Internet Protocol environment of architecture, including the client's IP address, may be shared with third parties as necessary to conduct the Program and all aggregate statistical data produced as a result of the Services (including the Test Results) may be provided to third parties.
- c. We will not release, disclose to the public, or share any test result with any outside entity, except as is consistent with the privacy policy privacy notice, and these Terms

and Conditions. The broadband performance information that is made available to public will aggregated data or processed coarsened raw data and with any data deemed sensitive removed or processed to address any concerns

- d. The FCC is soliciting and collecting this information authorized by OMB Control No. 3060-1139 in accordance with the requirements and authority of the Paperwork Reduction Act, Pub. L. No. 96-511, 94 Stat. 2812 (Dec. 11, 1980); the Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, Stat 4096 § 103(c)(1); American Reinvestment and Recovery Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat 115 (2009); and Section 154(i) of the Communications Act of 1934, as amended. For more information, see the Privacy Act of 1974, as amended (5 U.S.C. § 552a), and the FCC privacy policy.
- e. *Paperwork Reduction Act of 1995 Notice.* We have estimated that each Participant of this study will assume a one hour time burden over the course of the Program. Our estimate includes the time to install the Application, and periodic validation of the Application. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, Office of Managing Director, AMD-PERM, Washington, DC 20554, Paperwork Reduction Act Project (3060-1139). We will also accept your comments via the Internet if you send an e-mail to PRA@fcc.gov. Please DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS. You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number and provides you with this notice. This collection has been assigned an OMB control number of 3060-1139. THIS NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507. This notice may also be found at <https://www.testmyisp.com/paperwork.html>.

## 15. JURISDICTION

- a. These terms and conditions shall be governed by the laws of the state of New York.

## 16. THE SERVICES

- a. Subject to the Participant complying with its obligations under these terms and conditions, FCC shall use reasonable care to test the Connection so that the following information is recorded:
  - i. Download speed
  - ii. Upload speed
  - iii. UDP latency
  - iv. UDP packet loss
- b. In performing these tests, the Application will configured with a default download and upload capacity per month, which will be available and configurable by the Participant in the Application. The Participant acknowledges that this may impact the performance of the Connection and acknowledges and consents to the terms of the data consumption terms in Section 7.G.
- c. FCC will perform tests on the Participant's Connection by using the Application and Program's own data and will not monitor the Participant's content or internet activity. The purpose of this study is to measure the Connection and compare this data with other consumers to create a representative index of US broadband performance.

